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SENATE }

REPORT
No. 91-1048

CARLO DeMARCO

JULY 30, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2209]

The Committee on the Judiciary, to which was referred the bill (H.R. 2209) for the relief of Carlos DeMarco, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide Mr. Carlo DeMarco, a Federal postal employee, a separate leave account of 200 hours of annual leave in settlement of his claim for the loss of such leave earned in the years 1963 through 1967 due to an admitted Federal postal administrative error to recognize prior Federal civilian and military service in computation of such leave.

STATEMENT

The proposed legislation passed the House of Representatives June 17, 1969. The facts of the case as stated in the accompanying House Report No. 91-294 are as follows:

The report of the Post Office Department in a report dated September 13, 1968, on a previous bill stated that it had no objection to favorable consideration of the bill provided it was amended to show a separate account of 200 hours of annual leave. The committee has recommended such an amendment to the bill, H.R. 2209. When Mr. DeMarco was ap-

pointed to a position in the Toms River Post Office he did not complete and file a Standard Form 144, Statement of Prior Federal Civilian and Military Service. The failure to file this form caused the Department to place Mr. DeMarco in a leave category which did not take into account his prior Federal service. Thus, his leave account was undercredited during the years 1963 through 1967 as follows:

Calendar year:	Annual leave (hours)
1963 -----	8
1964 -----	48
1965 -----	48
1966 -----	50
1967 -----	46
Total -----	200

This lost leave cannot be restored to Mr. DeMarco administratively, because of the 30-day limitation respecting the accumulation of annual leave prescribed by 5 U.S.C. 6304(a).

In its report, the Post Office Department states that it does not object to the enactment of relief legislation for Mr. DeMarco. The report states that he was not made aware of the necessity of filing the necessary forms, standard form 144, and notes that he certainly had nothing to gain by failing to do so. The Post Office Department further states that its files clearly establish the administrative error.

The amendment recommended by the committee is to provide that the amount of annual leave added in the separate leave account authorized by the bill would be limited to 200 hours. The remaining 38 hours of annual leave referred to in the bill as introduced were accumulated in 1968 and were properly credited to Mr. DeMarco's 1968 leave account. To this degree, it was possible to adjust the matter by administrative action. It should further be noted that the bill in section 2 requires that the leave in the special account will have to be taken as leave and cannot be settled by means of a cash payment should the employee be separated from Federal service by death or otherwise without using such leave. This is a standard provision which the committee has required in other similar cases.

In agreement with the views of the Post Office Department and the House of Representatives, the committee recommends that the bill be considered favorably.

Attached hereto and made a part hereof is the aforementioned report of the Post Office Department.

POST OFFICE DEPARTMENT,
Washington, D.C., September 13, 1968.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Postmaster General has asked me to reply to your request for a report on H.R. 17422, a bill for the relief of Carlo DeMarco.

The bill would grant Mr. DeMarco, a postal employee of the Toms River, N.J., Post Office, a separate account of 238 hours of annual leave in settlement of his claim against the United States for compensation for the loss of such leave due to an administrative error. The leave was earned by Mr. DeMarco in the period 1963 through 1967.

The Department's records show that at the time Mr. DeMarco was appointed to a position in the Toms River Post Office he did not complete and file a Standard Form 144: Statement of Prior Federal Civilian and Military Service. The failure to file this form caused the Department to place Mr. DeMarco in a leave category which did not take into account his prior Federal service. Thus, his leave account was undercredited during the years 1963 through 1967 as follows:

Calendar year :	Annual leave (hours)
1963 -----	8
1964 -----	48
1965 -----	48
1966 -----	50
1967 -----	46
Total -----	200

This lost leave cannot be restored to Mr. DeMarco administratively, because of the 30-day limitation respecting the accumulation of annual leave prescribed by 5 U.S.C. 6304(a).

The Department does not object to the enactment of relief legislation of this employee. Apparently, Mr. DeMarco was not made aware of the necessity of filing a standard form 144, and certainly had nothing to gain by failing to do so. Our files clearly establish the administrative error.

Should the subject bill receive favorable consideration of the committee it is recommended that it be amended to show a separate account of 200 hours of annual leave instead of 238 hours. The remaining 38 hours of annual leave were accumulated in 1968 and are properly being credited to Mr. DeMarco's 1968 leave account.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee from the standpoint of the administration's program.

Sincerely yours,

TIMOTHY J. MAY,
General Counsel.

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